

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)	
THE DELAWARE ELECTRIC COOPERATIVE,)	
INC., FOR APPROVAL OF CHANGES IN)	PSC DOCKET NO. 04-202
DEPRECIATION RATES FOR ELECTRIC)	
PLANT PURSUANT TO 26 DEL. C. § 313)	
(FILED MAY 28, 2004))	

IN THE MATTER OF THE APPLICATION OF)	
THE DELAWARE ELECTRIC COOPERATIVE,)	
INC., TO RESET ITS POST-TRANSITION)	
REGULATED RATES UNDER 26 DEL. C.)	PSC DOCKET NO. 04-288
§ 1006(b)(2)(d) AND TO REVISE ITS)	
POST-TRANSITION STANDARD OFFER)	
SERVICE PRICE UNDER 26 DEL. C.)	
§ 1006(b)(2)(c) (FILED JULY 10, 2004))	

ORDER NO. 6596

AND NOW, this 22nd day of March, 2005.

WHEREAS, on July 30, 2004, Delaware Electric Cooperative (the "Cooperative") filed a cost-of-service study and a proposal to reset its rates pursuant to and in accordance with Section 1006(b)(2)(d) of the Electric Utility Restructuring Act;

AND WHEREAS, by Order No. 6469 (August 31, 2004), this Commission opened Docket No. 04-288 to review the Cooperative's filing, directed that Public Notice be published, and assigned the matter to a Hearing Examiner to prepare a report of findings and recommendations;

AND WHEREAS, Public Notice of the filing was published in the *Delaware State News* and *The News Journal* newspapers on September 7, 2004;

AND WHEREAS, by Order No. 6477 (September 14, 2004), this Commission consolidated PSC Docket No. 04-202, which was established to evaluate the Cooperative's depreciation rates, with Docket No. 04-

288 so that all issues impacting the Cooperative's post-Transition Period rates could be considered together in the same proceeding;

AND WHEREAS, Public Notice of the public comment hearing and evidentiary hearings was published in the *Delaware State News* on November 10, 2004 and *The News Journal* on November 11, 2004;

AND WHEREAS, a public comment hearing was held on November 30, 2004 in Georgetown, Delaware, and no public comments were offered;

AND WHEREAS, on March 17, 2005, the Parties jointly submitted to the Hearing Examiner a "Settlement Agreement" in order to resolve this proceeding, which is appended to the original hereof as "Attachment B";

AND WHEREAS, the terms of the proposed Settlement Agreement reflect approximately no change in overall revenue requirement, an increase in supply rates of approximately 14.5 percent, a decrease in distribution rates of approximately 24 percent, an overall rate impact on residential customers of approximately zero, and a modest rate impact on commercial customers;

AND WHEREAS, a hearing was held on March 17, 2005, regarding the merits of the settlement proposed by the Parties;

AND WHEREAS, the Commission has received and considered the Findings and Recommendations of Hearing Examiner William F. O'Brien, dated March 17, 2005, recommending approval of the Settlement Agreement as consistent with the requirements of the Public Utilities Act, the Public Utility Restructuring Act of 1999, and the public interest;

AND WHEREAS, no party filed exceptions to the Findings and Recommendations of the Hearing Examiner;

AND WHEREAS, we have reviewed the Findings and Recommendations of the Hearing Examiner; now, therefore,

IT IS ORDERED:

1. That, upon a hearing and by and in accordance with the affirmative vote of a majority of the Commissioners, the Commission hereby adopts the March 17, 2005 Findings and Recommendations of the Hearing Examiner, appended to the original hereof as "Attachment A".

2. That the Commission approves the March 17, 2005 proposed Settlement Agreement, appended to the original hereof as "Attachment B," and the proposed rates that result therefrom, as described above.

3. That the Delaware Electric Cooperative shall make a compliance rate filing within seven days of the date of this Order. Such filing shall include its new tariff sheets as well as a showing that its new rates comply with the terms of the Settlement Agreement.

4. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

PSC Dockets Nos. 04-202 & 04-288,
Order No. 6596 Cont'd.

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

A T T A C H M E N T "A"

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: MARCH 17, 2005

**WILLIAM F. O'BRIEN
SENIOR HEARING EXAMINER**

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

William F. O'Brien, duly appointed Hearing Examiner in this Docket, pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, by Commission Order No. 6469, dated August 31, 2004, reports to the Commission as follows:

I. INTRODUCTION

A. **Appearances**

The following counsel and parties entered appearances and participated in the proceeding:

On behalf of Delaware Electric Cooperative:
BY: JANET E. ARNOLD, ESQUIRE

HUDSON, JONES, JAYWORK & FISHER
BY: J. TERENCE JAYWORK, ESQUIRE.

On behalf of the Public Service Commission Staff:
ASHBY & GEDDES
BY: JAMES McC. GEDDES, ESQUIRE.

On behalf of the Division of the Public Advocate:
BY: G. ARTHUR PADMORE, PUBLIC ADVOCATE.

B. Procedural Background

1. On July 30, 2004, Delaware Electric Cooperative ("Applicant" or "Cooperative") filed a cost-of-service study, an application to reset its post-Transition Period regulated rates pursuant to and in accordance with the requirements of the Electric Utility Restructuring Act of 1999 ("Act"),¹ and pre-filed written testimony in support of the Application and cost-of-service study. The Cooperative sought to implement its proposed changes in service rates and "Terms and Conditions" on April 1, 2005, pursuant to the terms of 26 Del. C. § 1006(b)(1)(d) and coincident with the end of the Transition Period.

2. On August 31, 2004, in PSC Order No. 6469, the Commission established this proceeding, assigned the matter to this Hearing Examiner, and directed that public notice of the Application and Commission proceeding be published. In accordance with the Order, Public Notice was published on September 7, 2004.²

3. On September 14, 2004, in PSC Order No. 6477, the Commission consolidated PSC Docket No. 04-202, which was established to evaluate the Cooperative's depreciation rates, and PSC Docket No. 04-288 so that all issues impacting the Cooperative's post-Transition Period rates could be considered together in the same proceeding. In that Order, the Commission noted that it had previously, by PSC Order No. 6438, dated June 24, 2004, allowed the Cooperative to implement the requested depreciation rates on a temporary and interim basis, which resulted in a lowering of those rates.

¹ See 26 Del. C. § 1006(b)(2)(d).

² The affidavits of publication of notice were moved into the record evidence as Exhibit No. 1.

... (footnote continued to next page.)

4. The Parties to this proceeding are the Applicant, the Commission Staff ("Staff") and the Division of the Public Advocate (the "Public Advocate").

5. The procedural schedule for the proceeding was agreed to and submitted by the Parties and approved by letter dated October 13, 2004.

6. Public Notice of the public comment hearing, scheduled for November 30, 2004, and the evidentiary hearings, scheduled to begin March 17, 2005, was published in the *Delaware State News* and *The News Journal* newspapers on November 10, 2004, and November 11, 2004, respectively.

7. A public comment hearing was held in Georgetown, Delaware on the evening of November 30, 2004, at which representatives of each of the Parties appeared. No customers or members of the public attended the hearing, however, and no customers submitted any written comments.

8. On December 17, 2004, Staff and the Public Advocate submitted prepared written testimony addressing the Application. Prior to the filing of Applicant's rebuttal testimony, the Parties requested suspension of the procedural schedule, except for the scheduled hearing on March 17, 2005. This request was made to allow for the continuation of ongoing settlement negotiations. The Parties' request was not opposed and was therefore granted.

9. On March 17, 2005, a hearing was conducted in Dover at which time the Parties presented a fully executed Settlement Agreement and offered testimony in support of the settlement. In addition, because the Cooperative's Transition Period under the Act ends on March 31,

2005, and the new rates must be in effect on April 1, 2005, the Parties presented the Hearing Examiner with proposed Findings and Recommendations in order to facilitate submission of his Report in time for Commission consideration of the matter at its March 22, 2005 meeting.

10. At the conclusion of the hearing, the evidentiary record, consisting of twelve exhibits and a *verbatim* transcript of the hearing, was closed.³ I have considered the entire record and the comments of the Parties supporting the settlement, and submit for the Commission's consideration these Findings and Recommendations.

II. SUMMARY OF EVIDENCE

A. The Applicant

11. With the cost-of-service study, the Cooperative submitted the written direct testimony of five witnesses: (1) Mark A. Nielson, Vice-President of Staff Services (Ex. 2); (2) J. William Andrew, then Vice-President of Engineering & Operations (Ex. 3); (3) J. Steven Shurbutt, Vice-President and Principal in the firm of GDS Associates (Ex. 4); (4) Gary D. Cripps, Vice-President of Finance & Information Technology for the Cooperative (Ex. 5); and (5) Russell E. Shipe, CPA and Cost Management Consultant (Ex. 6).

12. Mr. Nielson testified to the Cooperative's proposed revisions to its "Terms and Conditions," including (1) elimination of the Industrial Rate Class and expansion of the Large Commercial-Primary class, so as to benefit the single customer currently taking service under the Industrial Rate Class; (2) removal of tariff rules

³ Hearing exhibits will be cited as "Ex. __."

that are no longer relevant or required, such as the Competitive Transition Charge; (3) removal of rates that do not have customers taking service on them; (4) changes necessary for compliance with Commission requirements; and (5) a number of corrections for internal consistency.

13. Mr. Andrew presented testimony regarding the adequacy of supply and supply planning, the volatility of power purchase markets, the significant growth that the Cooperative has experienced during the Transition Period, and the financial strain that this growth has placed on the Cooperative.

14. The Cooperative presented J. Steven Shurbutt, a consulting engineer and Vice-President and Principal of GDS Associates. Mr. Shurbutt presented the cost-of-service study, which he conducted. Mr. Shurbutt's cost-of-service study demonstrated a need to increase the Cooperative's generation rates by 14.5% due to significant increases in the cost of power purchased at wholesale. The cost-of-service study supported the Cooperative's request for a 21.4% decrease in distribution rates. This resulted in the Cooperative's request for an overall increase in rates of 1.34%.

15. Cooperative Witness Gary D. Cripps, Vice-President of Finance & Information Technology, presented testimony addressing the Cooperative's financial structure, the negative impacts of the rate freeze and increasing power purchase costs during the Transition Period, and the steps taken by the Cooperative to manage its cost of debt.

16. Finally, the Cooperative presented the testimony of Russell Shipe, a CPA and Cost Management Consultant. Mr. Shipe presented the depreciation study he conducted for the Cooperative in March 2004,

which demonstrated that the depreciation rates in effect at that time were too high, causing an annual understatement of net margins. Mr. Shipe recommended that the overall composite rate of depreciation be decreased from 5.59% to 4.19%. In addition, Mr. Shipe recommended that the overstatement in the accumulated provision for depreciation be amortized over 14 years, which is the estimated composite remaining life of the Cooperative's depreciable assets.

B. Commission Staff

17. Staff presented the pre-filed testimony of four witnesses: (1) Janis L. Dillard, Regulatory Policy Administrator (Ex. 7); (2) David N. Bloom, Public Utility Analyst (Ex. 8); (3) David E. Peterson, a senior consultant with Chesapeake Regulatory Consultants, Inc. (Ex. 9); and (4) Michael J. Majoros, Vice-President of Snavelly King Majoros O'Connor & Lee, an economic consulting firm (Ex. 10).

18. Ms. Dillard presented testimony in support of Staff's target Times Earned Interest Ratio ("TIER") for the Cooperative, and presented a wholesale market analysis of regional standard offer service pricing. In general, the TIER is a measurement of an electric cooperative's ability to repay debt.

19. Mr. Bloom's prepared direct testimony described the process and sources used to develop the wholesale pricing data used in Ms. Dillard's wholesale market analysis.

20. Staff presented the prepared direct testimony of Mr. Peterson, who conducted a review of the Cooperative's proposed rates. In his direct testimony, Mr. Peterson determined the Cooperative's test year rate base, and calculated the required revenue requirement adjustment that would product the target TIER recommended by Staff Witness Dillard.

21. Mr. Majoros addressed the Cooperative's proposed depreciation rates in his testimony and recommended additional decreases to the proposed rates.

C. The Public Advocate

22. The Public Advocate presented the prepared direct testimony of Andrea C. Crane, Vice-President of the Columbia Group, a public utility consulting firm. (Ex. 11.) Ms. Crane's testimony included discussions of numerous elements of the Cooperative's cost-of-service study and several proposed adjustments. Ms. Crane also calculated test year, *pro forma* revenues and operating expenses for the Cooperative, and recommended a specific Modified TIER level for the Cooperative's rates that would result in an overall slight rate decrease for Cooperative Members. In addition, Ms. Crane evaluated the Cooperative's proposed revisions to its "Terms and Conditions."

III. THE PROPOSED SETTLEMENT AGREEMENT

23. At the March 17, 2005 hearing, the Parties presented a proposed Settlement Agreement (Ex. 12), which will be appended to the proposed Order in this case as "Attachment B." The parties offer the Settlement Agreement as a compromise to the litigation positions that they presented in their pre-filed testimony. At the hearing, each Party presented a witness who testified that it was his or her opinion that the rates proposed in the Settlement were just and reasonable and in compliance with the Act and that adoption of the Settlement would be consistent with the public interest.

24. The terms of the Settlement Agreement are summarized as follows:

- (a) The current overall test year revenue provided by the rates charged by the Cooperative are appropriate;
- (b) The Cooperative's rates should be revised to produce the total annual revenue of \$82,338,106, based upon 2003 test year data currently being experienced by the Cooperative's Member/owners. Thus, the tariff rates should be revised to produce \$22,249,730 in distribution delivery service revenue and \$59,067,180 in electric supply service revenue based upon 2003 test year data. In addition, \$1,021,196 in other revenue will be produced based on 2003 test year data, resulting in total *pro forma* revenues of \$82,338,106. The electric supply service revenue of \$59,067,180 will be composed of \$58,366,131 in purchased power costs and \$701,049 for the retail adder, which includes \$587,826 proposed by DEC in its filing and the uncollectible adjustment of \$113,223 proposed by the DPA, all based upon 2003 test year data;
- (c) Revisions to the Cooperative's Terms and Conditions, as set forth in Appendix A to the Settlement, are reasonable and in the public interest. The Cooperative's proposal to close the Industrial rate is in the public interest, as the rate currently has only one Cooperative Member on it, and that member would materially benefit from a move to the Large Commercial-Primary rate, which the Cooperative will modify so as to accommodate the customer;
- (d) The Cooperative's currently effective depreciation rates, established by Commission Order No. 6438, (Docket No. 04-202, Dated June 22, 2004), shall continue in full force and effect until the Cooperative files its next depreciation study;
- (e) The Cooperative shall file its next depreciation study within three (3) years of the date of the Commission's final Order in this proceeding;
- (f) The Cooperative shall record regulatory liabilities pursuant to and in accordance with Generally Accepted Accounting Principles (GAAP);

- (g) A new PCA mechanism for the Cooperative is appropriate so as to reduce the need for DEC to make more frequent filings requesting rate relief. The PCA will be based on purchased power costs of \$58,366,131, which is the purchased power cost included in the electric supply service rates and, therefore, the amount that will be subject to a true-up; and
- (h) Adjustment of the retail adder to reflect an allocation of a share of the uncollectible expense to the Electric Supply Service function, allocating 70.67% of the total claimed uncollectible costs to the Electric Supply Service function, based on the Cooperative's suggested revenue requirements, which will increase the proposed retail adder from 0.061 cents per kWh to 0.072 cents per kWh.

IV. FINDINGS AND RECOMMENDATIONS

25. Section 512 of the Public Utilities Act encourages the resolution of matters brought before the Commission through settlement. In this case, all Parties agree to the settlement terms. At the outset, the Parties are to be commended for their work in achieving this settlement, which resolves the myriad of issues raised by the Parties in their respective prefiled testimonies.

26. Section 1006(b)(2)(d) of the Public Utility Restructuring Act of 1999 required that the Cooperative file a rate case quality cost-of-service study by September 2004, consistent with the Commission's Minimum Filing Requirements in effect on February 1, 1999. The Cooperative's filing was in full compliance with this requirement, and the Parties had a full and fair opportunity to evaluate the filing, discuss the issues, and achieve a resolution as to the rates for the Cooperative going forward.

27. Section 1006(b)(2)(c) mandates that, if the Cooperative is the Standard Offer Service provider, then the Standard Offer Service ("SOS") price must be representative of the wholesale electric market price. The Cooperative continues to be the SOS service provider, and the rates as established by the Settlement Agreement are fully representative of the wholesale electric market price, as is amply demonstrated by the analysis presented by Staff Witness Dillard.

28. Turning to the merits of the proposed Settlement Agreement, I find that, on its face, it is a reasonable resolution to this proceeding, and no party disputes it. It establishes rates that are balanced, just and reasonable, well supported, and in the public interest. Further, as with any settlement, there is the important benefit from reduced regulatory expenses, which also inures to the benefit of the Cooperative and its Members.

29. The terms of the proposed settlement fairly balance the interests and needs of the Cooperative and its Members. Under the settlement, the Cooperative's revenues will remain at approximately current levels while the rates for supply will increase approximately 14.5 percent and distribution rates will decrease approximately 24 percent. The overall rate impact on residential customers will be approximately zero, with a modest rate impact on commercial customers.

30. At a time when electric utilities elsewhere are requesting significant rate increases, implementation of the terms of this settlement will provide a real and substantial benefit to the Cooperative's Members, while fairly compensating the Cooperative for the service it provides. The rates as proposed by the Parties to the Settlement Agreement are just and reasonable, and in full compliance with the terms of the Public Utilities Act.

31. Introduction of a flexible mechanism for recovering power purchase costs will benefit both the Cooperative and its Members, by enabling the Cooperative to fully recover its purchased power costs and shielding its Members from the potential "rate shock" of significant jumps in energy prices that might occur after a period of years without adjustment. In doing so, it will afford the Cooperative financial protection from the volatility currently being experienced in the wholesale marketplace, while giving Members the benefit of rate decreases when power purchase costs go down. Overall, the mechanism fairly balances the needs of the Cooperative and its Members.

32. Depreciation rates will remain as approved by the Commission in Order 6438 (Docket No. 04-202, Dated June 22, 2004), and the Cooperative will file another depreciation study within three years, to permit evaluation of depreciation rates to insure that they remain appropriate and in the public interest. This will insure that Cooperative Members realize the benefits of reduced depreciation rates today, and pay fair and appropriate depreciation rates in the future.

33. In summary, having evaluated the terms of the Settlement Agreement and all applicable law, I find that the Settlement complies fully with the requirements of the Public Utilities Act, and I recommend the approval of the proposed Settlement as consistent with the law and the public interest.

34. Therefore, for the reasons discussed above, and based on the record of this proceeding, I recommend that the Commission adopt the March 17, 2005 proposed Settlement Agreement ("Attachment B" to the proposed Order) as just and reasonable and consistent with the public interest. A proposed Order, which will implement the foregoing recommendation, is attached hereto.

Respectfully submitted,

/s/ William F. O'Brien
William F. O'Brien
Senior Hearing Examiner

Dated: March 17, 2005

A T T A C H M E N T "B"

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§ 1006(b)(2)(c) (FILED JULY 30, 2004))	

SETTLEMENT AGREEMENT

On this day, March 17, 2005, the Delaware Electric Cooperative, Inc. ("DEC" or the "Cooperative") and the other undersigned parties, referred to individually as a "Party", and all of whom together are the "Settling Parties," hereby propose a settlement of all issues in this proceeding.

I. BACKGROUND

Pursuant to 26 *Del. C.* § 1006(b)(2)(d), DEC filed on July 30, 2004 a cost of service study including schedules and a proposal that the rates for its regulated electric services be reset by the Delaware Public Service Commission (the "Commission"). DEC's application (hereinafter the "Application") proposed to put its changes in service rates and Terms and Conditions into effect on April 1, 2005, pursuant to the terms of 26 *Del. C.* § 1006(b)(1)(d) and coincident with the end of the Transition Period.

The rates proposed by DEC included a decrease in distribution delivery service rates of 21.4% and increase in Electric Supply Service rates of 14.5%. This results in an overall rate

increase of 1.34%. DEC alleges that significant increases in the cost of wholesale power purchases and decreases in distribution system costs (resulting from refinancing at lower interest rates and reducing its depreciation rates) netted out to a request for a small increase in its retail electric rates.

Prior to the filing by DEC of this Application, the Cooperative had filed with the Commission an application to reduce its depreciation rates in an attempt to prevent falling below certain TIER and OTIER requirements with its major lenders. (*See* Docket No. 04-202, filed May 28, 2004). That application requested a decrease in depreciation rates to counter-balance DEC's increased purchase power costs, thereby enabling the revenues from DEC's present rates to provide operating margins in calendar year 2004 sufficient to meet the TIER and OTIER thresholds called for in its loan agreements. Staff recommended that this be approved on a temporary basis and the Commission, by Order No. 6438, dated June 22, 2004, approved the Cooperative's request to implement the reduction in depreciation rates on a temporary basis.

In September, the Commission -- at Staff's request -- consolidated the depreciation case with the Application so that the Cooperative's depreciation rates could be analyzed as part of the proceeding resetting the Cooperative's electric rates. *See* Commission Order No. 6477, dated September 14, 2004.

II. SUMMARY OF TESTIMONY

A. DEC Testimony.

In addition to its request for an overall rate increase of 1.34%, the Cooperative also proposed a modification of its depreciation expense for electric plant from the current level of 5.59% set in 1988 to a revised 4.19% based on an updated study performed for DEC in March 2004. If implemented, the change would result in a decrease of the Cooperative's annual

depreciation expense of approximately \$2.19 million. In addition, testimony sponsored by the Cooperative indicated that the use of the 5.59% overall depreciation rate since 1988 had overstated the Cooperative's depreciation reserve by approximately \$17 million. The Cooperative proposed a decrease in the annual depreciation expense of \$1.2 million over the next 14 years to zero out this over collection.

In addition, DEC is proposing a reinstatement of the Power Cost Adjustment mechanism ("PCA"), similar to that which was in place prior to 2000. The PCA mechanism permits DEC to keep pace with the volatility in the energy markets in a manner that the Settling Parties believe is consistent with the requirements of 26 Del. C. §1006(b)(2).

B. DPA Testimony

DPA filed testimony on issues related to accounting, revenue requirement and rate of return for a cooperative, which unlike an investor owned utility is owned by its customers rather than its shareholders. DPA recommended a rate decrease of \$1.7 million, as compared to DEC's requested increase of \$1.1 million. In addition, the DPA suggested that a portion of the Cooperative's uncollectible expense claim should be allocated to the Electric Supply Service function, which at present is allocated exclusively to the distribution delivery service cost function. The result of this recommendation would increase the Cooperative's proposed retail adder from 0.061 cents per kWh to 0.072 cents per kWh.

C. Staff Testimony

Staff filed direct testimony concerning rate base issues, revenues and rate of return, as well as on depreciation issues. Staff suggested that the Cooperative's depreciation rates were excessive leading to a higher than required revenue requirement and inter-generational equity problems if approved. However, Staff recognized that a reflection in the full amount of the

depreciation adjustment might have unfavorable repercussions on DEC's cash flow position and recommended a phased in approach to its proposed reduction in depreciation reserves. In addition, revenue requirement testimony supplied by Staff indicated that rather than rates being increased by \$1.1 million as requested by DEC, the rates could be decreased by \$1 million if depreciation rates were set at Staff's recommended level.

III. PROPOSED SETTLEMENT

DEC and the other Settling Parties agree to propose to the Commission the following resolution of the identified issues:

1. The Settling Parties agree that the current overall test year revenue provided by the rates charged by DEC are appropriate as defined under the relevant statute, 26 *Del. C.* § 1006(a)(2)(d), and believe that the rates as adjusted per paragraph 4 below are in the public interest. The Settling Parties have reached this agreement after considering the testimony filed by DEC in support of its Application and the testimony of the other Parties filed in this proceeding. Although Staff and the other Parties recognize that certain adjustments such as a lower TIER coverage (2.50 as proposed by Staff versus 2.79 as proposed by the Cooperative), along with lower depreciation rates, might support a small rate reduction in the current distribution delivery service revenue requirement, the Settling Parties recognize that keeping the overall test year revenue at the same level as that experienced by customers during the Transition Period is in the public interest.

2. The Settling Parties agree that the changes proposed by the Cooperative to its Terms & Conditions, as listed in Appendix A attached hereto and made a part hereof, are reasonable and in the public interest. The Settling Parties further agree that the Cooperative's proposal to close the Industrial rate is in the public interest, as the rate currently has only one Cooperative

Member on it, and that member would materially benefit from a move to the Large Commercial-Primary rate, which the Cooperative proposed to modify so as to accommodate the customer.

3. Because the Settling Parties have reached an agreement to keep overall test year revenue at the same level, the Settling Parties have not reached, and believe they need not reach, specific agreement on depreciation rates, except with respect to paragraphs 5 and 6 below and that we, the Settling Parties, agree that a new depreciation study shall be filed within three years of the date of the Commission's final Order in this proceeding to evaluate existing depreciation rates at the time to see if they are appropriate.

4. The Settling Parties agree that DEC's rates should be revised to produce the total annual revenue of \$82,338,106 based upon 2003 test year data currently being experienced by the Cooperative's Member/owners. Thus, the tariff rates should be revised to produce \$22,249,730 in distribution delivery service revenue and \$59,067,180 in electric supply service revenue based upon 2003 test year data. In addition, \$1,021,196 in other revenue will be produced based on 2003 test year data, resulting in total pro forma revenues of \$82,338,106. The electric supply service revenue of \$59,067,180 will be composed of \$58,366,131 in purchased power costs and \$701,049 for the retail adder, which includes \$587,826 proposed by DEC in its filing and the uncollectible adjustment of \$113,223 proposed by the DPA, all based upon 2003 test year data.

5. The Settling Parties agree that the Cooperative's currently effective depreciation rates, established by Commission Order No. 6438, (Docket No. 04-202, Dated June 22, 2004), shall continue in full force and effect until the Cooperative files its next depreciation study pursuant to and in accordance with paragraph 3 above.

6. The Settling Parties agree that the Cooperative shall record regulatory liabilities pursuant to and in accordance with GAAP.

7. Regarding the PCA, the Settling Parties agree to support DEC's request to implement a new PCA mechanism. The Settling Parties believe that such a mechanism will reduce the need for DEC to make more frequent filings requesting rate relief. Also, Staff believes that such a mechanism may promote competition by providing an incentive to smaller customers, who might prefer stable rates, to shop among third-party suppliers to get rates that are guaranteed for some period of time. The PCA will be based on purchased power costs of \$58,366,131, which is the purchased power cost included in the electric supply service rates and, therefore, the amount that will be subject to a true-up.

8. Finally, the Settling Parties agree to adopt DPA's adjustment of the retail adder to reflect an allocation of a share of the uncollectible expense to the Electric Supply Service function, allocating 70.67% of the total claimed uncollectible costs to the Electric Supply Service function, based on the Cooperative's suggested revenue requirements, which will increase the proposed retail adder from 0.061 cents per kWh to 0.072 cents per kWh.

IV. RESERVATIONS

A. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any ratemaking or any other principle in any future case. No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Settlement other than as specified herein, except that the Settling Parties agree that the resolution of the issues herein, taken as a whole, results in appropriate rates, that the disposition of all other matters set

forth in the Settlement are in the public convenience, necessity and interest and that, with the disposition of all such matters as set forth herein, this docket may be closed.

- B. The various provisions of the Settlement are not severable. None of the provisions shall become operative unless and until the Commission issues an order approving the Settlement as to all of the terms and conditions set forth herein without modifications or conditions. The Settlement shall be subject to waiver only by the unanimous written agreement of the Settling Parties. If any portion of this Settlement is modified, conditioned, or rejected by the Commission, the Settlement shall be considered null and void and each Settling Party individually reserves the right to proceed with the filing of testimony, briefs and evidentiary hearings. If the Settlement is rendered null and void by operation of this section III.B., the Settling Parties agree to enter into good faith negotiations to reach a new settlement. Once the Settlement has become operative under the terms of this section III.B., its terms may be revised or waived only by the unanimous written agreement of the Settling Parties.
- C. This Settlement Agreement constitutes the entire agreement between the Settling Parties with respect to the matters contained herein, and each Party confirms that it is not relying upon any representations or warranties of another Party, except as specifically set forth herein or incorporated by reference hereto.
- D. This Settlement Agreement shall be governed by the laws of the State of Delaware.
- E. This Settlement Agreement may be executed in counterparts, and when a counterpart has been executed by all Parties, all Parties shall be bound hereby as if all of said Parties had executed the same counterpart.

V. CONCLUSION

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives and the undersigned Settling Parties further recommend and urge the Commission to issue an order expeditiously approving this Settlement and making the requesting findings and approvals set forth herein.

/s/ J. William Andrew
Delaware Electric Cooperative

/s/ Bruce H. Burcat
Delaware Public Service Commission Staff

/s/ G. Arthur Padmore
Division of the Public Advocate